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Supreme Court, U. S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1971.

**No. 72-241**

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN (NOW KNOWN AS UNITED TRANSPORTATION UNION),

*Petitioner,*

*vs.*

INDIANA HARBOR BELT RAILROAD COMPANY,

*Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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August 16, 1972.

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BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN (NOW KNOWN AS UNITED TRANSPORTATION UNION),

*Petitioner,*

*vs.*

INDIANA HARBOR BELT RAILROAD COMPANY,

*Respondent.*

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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*To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

The petitioner, Brotherhood of Locomotive Firemen and Enginemen (now known as United Transportation Union), respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in this proceeding on April 3, 1972.

### OPINIONS BELOW.

The opinion of the Court of Appeals (1972, CA 7 Ill.), printed in Appendix B, *infra*, p. A. 4 is reported in 458 F. 2d 1077. Its judgment is printed in Appendix B, *infra*, p. A. 13.

The opinion of the District Court (1970, Dist. Ct. Ill.) (App. in Ct. of App., p. 30) is printed in Appendix C, *infra*, p. A. 14. The opinion is not reported. Its judgment (App. in Ct. of App. pp. 3-4) is printed in Appendix C, *infra*, p. A. 18.

**JURISDICTION.**

The judgment of the Court of Appeals for the Seventh Circuit was entered on April 3, 1972 (Appendix B, *infra*, p. A. 13). On June 20, 1972 the Supreme Court of the United States entered an order extending to and including August 16, 1972 the time for filing a petition for writ of certiorari in this case. The jurisdiction of this Court is invoked under 28 U. S. C. section 1254(1).

**QUESTIONS PRESENTED.**

1. Whether the Court of Appeals had authority in the petitioner's suit to enforce or review Award No. 1 of Public Law Board No. 128, rendered under the Railway Labor Act, to grant the request of the respondent that the judgment entered in favor of the petitioner be reversed and the District Court be directed to enter judgment for the respondent.

2. Whether the District Court had authority to deny the respondent's request that Award No. 1 of Public Law Board No. 128 be remanded to the Board for its interpretation.

3. Whether the Court of Appeals should have considered the appeal as one from an interlocutory order.

4. Whether there was a reasonable basis for the then conclusion of the District Court that Award No. 1 of Public Law Board No. 128 directed the respondent to adhere to the Home Terminal Agreement in the assignment of demoted engineers and firemen qualified to work as engineers.

5. Whether the District Court abused its discretion in then directing the respondent to restore the status quo in the assignment of demoted engineers and firemen qualified to work as engineers.

## STATUTES INVOLVED.

The statutory provisions involved are section 3. First, (p) and (q) and section 3. Second, of the Railway Labor Act (45 U. S. C. § 153 First (p) and (q) and § 153 Second), which are printed, in pertinent part, in Appendix A, *infra*, pp. A. 1-A. 3.

## STATEMENT OF THE CASE.

The petitioner filed its complaint on June 28, 1967 for injunction against the repondent alleging that the respondent on May 29 and May 30, 1967 had transferred ten named enginemen from the respondent's Norpaul yard to Blue Island yard, thus constituting a substantial change in their working conditions as embodied in a Home Terminal Agreement which had become effective August 1, 1965. The complaint prayed for an injunction ordering the respondent to return the ten enginemen to employment at the terminal designated by them as their home terminal, namely, Norpaul yard (Addendum to Pet.'s Br. in Ct. of Appeals, pp. 1a-2a). The basis for Federal jurisdiction was that the suit arose under an Act of Congress regulating interstate commerce, namely, the Railway Labor Act (45 U. S. C. § 151), within the language of 28 U. S. C. § 1337.

The District Judge stated his opinion that the case presented a question for the National Railroad Adjustment Board or a special board of adjustment, and struck the cause from the calendar without prejudice and with leave to the petitioner to reinstate at the appropriate time (Addendum to Pet.'s Br. in Ct. of Appeals, p. 3a).

The petitioner and the respondent entered into an agreement establishing a Special Adjustment Board under the Railway Labor Act to make a binding settlement of the dispute, which was known as Board No. 128.

At the hearings before the Board the petitioner presented its case concerning the Home Terminal Agreement and also as to damages suffered by the ten named employees (Bk. of Ex. in Ct. of Appeals, pp. 31-43, 54-84).

In its Award No. 1 issued April 2, 1968 the Board found that:

> "The ten firemen moved from the working list at Norpaul to the working list at Blue Island were not the ten most junior men on the firemen's seniority roster."

Award No. 1 concluded as follows:

> "The Organization contends that the Home Terminal Agreement, effective August 1, 1965, established home terminals for firemen and when a terminal has been selected by a fireman it could not be changed except as provided in that Agreement. The August 1, 1965 Agreement permits the fireman qualified as an engineer to select a terminal where he would work as an engineer when his seniority permits, and to work as a fireman so long as his seniority as a fireman permits. We find, however, that when the Carrier, without negotiation and agreement, unilaterally assigned firemen from Norpaul to Blue Island without reference to their standing on the firemen's seniority roster it was in violation of Article 26 of the current Agreement.
>
> Award: Protest sustained." (Addendum to Pet.'s Br. in Ct. of Appeals, pp. 18a and 19a).

The "Protest sustained" by the Award is found in the employees' Statement of Claim, which reads:

> "The employees' protest against the carrier moving, on May 29 and May 30, 1967, ten (10) demoted engineers or qualified firemen, working as firemen, from

their designated home terminal at Norpaul Yard to Blue Island Yard" (Addendum to Pet.'s Br. in Ct. of Appeals, pp. 3a, 14a-17a).

The petitioner requested the Board to render an interpretation of its award which would amplify the meaning of the language used, but this was refused by the Board (Addendum to Pet.'s Br. in Ct. of Appeals, pp. 4a, 6a, 21a, and 28a).

Subsequent to the Award the respondent transferred back to Norpaul yard the ten enginemen named in the suit, but on June 27, 1969 the respondent, over the objection of the petitioner, ordered that six of the original ten enginemen could not exercise their seniority rights at Norpaul but must go to Blue Island or Gibson yards (Addendum to Pet.'s Br. in Ct. of Appeals, p. 8a).

Further, the respondent refused the request of the petitioner for payment to the ten employees for their damages arising from the violation by the respondent of Article 26 of the collective bargaining agreement (Addendum to Pet.'s Br. in Ct. of Appeals, pp. 6a-7a).

Thereupon the petitioner moved to reinstate the District Court case and to amend its complaint so as to enforce the award by enjoining the petitioner from requiring the six employees to work at Blue Island yard or Gibson yard, instead of at Norpaul yard, and by entering such judgment, including the stating of names of employees who had suffered damage and the dollar amount thereof, as may be appropriate to enforce the award. In the alternative, the petitioner asked the Court to review the award, or remand it to the Board for such further action as the Court might direct, as provided in Section 3. First (q) of the Railway Labor Act (Addendum to Pet.'s Br. in Ct. of Appeals, p. 11a). When leave was granted to file the amendment, the petitioner moved for summary judgment to enforce the award (App. in Ct. of Appeals, p. 13).

The District Court agreed with the petitioner that the award directed the respondent to adhere to the Home Terminal Agreement in the assignment of demoted engineers and firemen qualified to work as engineers and that the six employees had been improperly transferred. The District Court granted that portion of the petitioner's motion for summary judgment

> "... that goes to the issue of the Railroad's right to transfer or abolish jobs in violation of the Home Terminal Agreement and the Railroad is directed forthwith to restore the affected employees to their proper position consistent with the Collective Bargaining Agreement and the Home Terminal Agreement" (App. in Ct. of Appeals, p. 33) (Appendix C, *infra*, p. A17).

With respect to damage claims, the District Court said:

> "The Railroad's contention that the damage claims were not timely filed or were not before the Board is not well taken. However, the actual amount of the damages cannot be determined without the benefit of an adversary proceeding. Clearly the actual amount of damages sustained by an injured employee is a question of fact that makes Summary Judgment inappropriate on this issue. Accordingly the Union's motion for Summary Judgment on the issue of damages is denied" (App. in Ct. of Appeals, p. 33) (Appendix C, *infra*, p. A17).

The District Court's order entered September 24, 1970 is found in the Appendix in the Court of Appeals, at pages 3-4, and in Appendix C, *infra*, p. A18.

The District Court did *not* take any action under Rule 54(b) of the Rules of Civil Procedure for the United States District Courts concerning "Judgment Upon Multiple Claims or Involving Multiple Parties." Therefore the petitioner doubted the finality of the District Court's order of September 24, 1970. On its appeal the respondent specified as a ground of jurisdiction the provision pertaining to

interlocutory orders of the district courts granting injunctions (28 U. S. C. 1292(a) (1)) and, in addition, sought a broader review based on the doctrine of *Gillespie* v. *U. S. Steel* (1964), 379 U. S. 148 and *Cohen* v. *Beneficial* (1949), 337 U. S. 541.

In its Notice of Appeal from the order of the District Court the respondent appealed

> ". . . from a Summary Judgment granting the above named Plaintiff's Petition to enforce an award of Public Law Board No. 128 (Special Adjustment Board created under the provisions of the National Railway Labor Act) and denying the Defendant's Motion for Summary Judgment, said judgment having been entered in this action on the 24th day of September, 1970, and the order entered on June 9, 1970, denying Defendant's Motion to Remand the dispute to Public Law Board No. 128" (App. in the Ct. of Appeals, pp. 49-50).

The opinion of the Court of Appeals refers to the respondent's request for a review of the injunction but does not state whether the Court is passing on an interlocutory or final order (Appendix B, *infra*, p. A. 11). To the Court of Appeals "The award seems clear and unambiguous" (Appendix B, *infra*, p. A. 6). The Court of Appeals believes that the award sustains the petitioner's protest on a ground different from that stated by the District Court (Appendix B, *infra*, p. A. 12).

The Court of Appeals then concludes that

> ". . . the Summary Judgment entered in favor of the Union must be reversed and this cause remanded to the District Court to enter judgment for Indiana Harbor" (Appendix B, *infra*, p. A. 12).

No specific disposition is made of the claim for damages and the applicability, or non-applicability, of the Home Terminal Agreement, and their status is now a matter of conjecture.

## REASONS FOR GRANTING THE WRIT.

### Introduction—1966 Amendments of Railway Labor Act.

In a suit to enforce an award under Section 3 First (p) of the Railway Labor Act (45 U. S. C. § 153 First (p)) the district courts are now empowered to make such order as may be appropriate to enforce or set aside the order, provided, however, that such order may not be set aside except for failure of the Board to comply with the requirements of the Railway Labor Act, for failure of the order to conform, or confine itself, to matters within the scope of the Board's jurisdiction, or for fraud or corruption by a member of the Board (Appendix A, *infra,* p. A. 1).

In a suit to review an award under new Section 3 First (q) of the Railway Labor Act (45 U. S. C. § 153 First (q)), the court now has jurisdiction to affirm the order of the board, or to set it aside, in whole or in part, or it may remand the proceeding to the board for such further action as it may direct. On such review, the findings and order of the board shall be conclusive on the parties, except that the order of the board may be set aside, in whole or in part, or remanded to the board, for the same three reasons noted above in sub-paragraph (p). The judgment of the court is subject to review as provided in sections 1291 (final decisions of district courts) and 1254 (Courts of Appeal) of Title 28 (Appendix A, *infra,* p. A. 2).

It should also be noted that at the time the Congress was considering the 1966 amendments to the Railway Labor Act which increased the finality of awards and added sub-paragraph (q), as above stated, it was assumed that a Federal court would have the power to decline to enforce an award which was actually and indisputably without foundation in reason or fact (1966 U. S. Code Congressional and Administrative News 2287; Annotation in 9 ALR Fed.

533 (1971 Volume) Judicial Enforcement or Revision of Decisions of National Railroad Adjustment Board Under 45 USC § 153 First, (p) and (q), or of Special Adjustment Board under 45 USC § 153 Second, p. 537).

The Court of Appeals, below, made no finding that Board No. 128 in its Award No. 1 failed to comply with the requirements of the Railway Labor Act, that it failed to conform, or confine itself, to the matters within the scope of the Board's jurisdiction, or that a member of the Board was guilty of fraud or corruption. Nor did the Court of Appeals declare Award No. 1 to be actually and indisputably without foundation in reason or fact. But it did attempt to interpret the award.

The Court of Appeals simply reversed the order of the District Court which had stated that it was enforcing the award, in part, and was saving the damages question for hearing. The Court of Appeals directed the District Court to enter judgment for the respondent.

1. The 1966 amendments to the Railway Labor Act were intended by the Congress to place employees on a parity with their railroad employers in a newly enacted very limited review of awards of the National Railroad Adjustment Board and of newly authorized special boards of adjustment. (Senate Report No. 1201 of June 2, 1966, 1966 U. S. Code Congressional and Administrative News 2287; Appendix A, *infra*, pp. A. 1-A. 3). This Court promptly declared that the remedies of sub-paragraphs (p) and (q) were available jointly in enforcement suits. *Transportation —Communication Employees Union* v. *Union Pacific R. Co.* (1966) 385 U. S. 157, 165, reh. den. 385 U. S. 1032.

The Court of Appeals below apparently construes the 1966 amendments as not limiting the powers of Federal

courts to deny enforcement of awards made under the Railway Labor Act. Thus the Court is able to turn an

> "Award: Protest sustained"

into

> "REMANDED to the said District Court, with directions to enter judgment for Indiana Harbor. . . ."

Inasmuch as the 1966 amendments provide that action by courts on petitions for review of awards as authorized in sub-paragraph (q) is itself subject to review under 28 U. S. C. §§ 1291 and 1254 (Appendix A, *infra*, p. A. 2), this Court should issue its instructions for the implementation of the 1966 amendments.

2. Shortly before the 1966 amendments to the Railway Labor Act this Court considered the binding effect of awards of the National Railroad Adjustment Board. In *Gunther* v. *San Diego & A. E. R. Co.* (decided December 8, 1965) 382 U. S. 257, this Court, in reversing the refusal of the Court of Appeals to uphold the Adjustment Board's order, said at pages 263-264:

> "The award of the Board in this case, based on the central finding that petitioner was wrongfully removed from service is twofold, consisting both of an order of reinstatement and the money award for lost earnings. Thus there arises the question of whether the District Court may open up the Board's finding on the merits that the railroad wrongfully removed petitioner from his job merely because one part of the Board's order contained a money award. We hold it cannot. This Court time and again has emphasized and re-emphasized that Congress intended minor grievances of railroad workers to be decided finally by the Railroad Adjustment Board. In *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana R. Co.*, 353 U. S. 30, the Court gave a Board decision the same finality that a decision of arbitrators would have. In *Union Pacific R. Co.* v. *Price*, 360 U. S. 601, the Court discussed the

legislative history of the Act at length and pointed out that it "was designed for effective and final decision of grievances which arise daily" and that its "statutory scheme cannot realistically be squared with the contention that Congress did not purpose to foreclose litigation in the courts over grievances submitted to and disposed of by the Board. . . ." 360 U. S., at 616. Also in *Locomotive Engineers* v. *Louisville & Nashville R. Co.*, 373 U. S. 33, the Court said that prior decisions of this Court had made it clear that the Adjustment Board provisions were to be considered as "compulsory arbitration in this limited field," p. 40, "the complete and final means for settling minor disputes," p. 39, and "a mandatory, exclusive, and comprehensive system for resolving grievance disputes. P. 38."

* * * * *

"IV. There remains the question of further proceedings in this case with respect to the money aspect of the Board's award. The Board did not determine the amount of back pay due petitioner on account of his wrongful removal from service. It merely sustained petitioner's claim for "reinstatement with pay for all time lost from October 15, 1955." Though the Board's finding on the merits of the wrongful discharge must be accepted by the District Court, it has power under the Act to determine the size of the money award. The distinction between court review of the merits of a grievance and the size of the money award was drawn in *Locomotive Engineers* v. *Louisville & Nashville R. Co., supra*, at pp. 40-41, when it was said that the computation of a time-lost award is "an issue wholly separable from the merits of the wrongful discharge issue."

In refusing to enforce Award No. 1 of Public Law Board No. 128 and in directing the entry of judgment for the respondent, the Court of Appeals below has decided a federal question in a way in conflict with the principles stated in the *Gunther Case*, above, 382 U. S. 257.

3. The award of a board, such as Board No. 128, created

under the provisions of § 153, Second of the Railway Labor Act has been held subject to the judicial review provisions of subsections (p) and (q) of the Railway Labor Act, including the remanding of the order to the Board for consideration of additional matters (*Transportation-Communication Employees Union* v. *St. Louis-San Francisco R. Co.* (1968), 296 F. Supp. 507, app. dismd. (CA 8), 419 F. 2d 933, 935, cert. den. 400 U. S. 818).

Again, courts of appeals other than the Court of Appeals, below, have held that the district court could not refuse to enforce under the 1966 amendments an award which did not specify the amounts in dollars and cents due each of the affected employees, or which failed to state the names of the employees. Thus, in *Sweeney* v. *Florida East Coast R. Co.* (1968 CA 5 Fla.), 389 F. 2d 113, the Court of Appeals pointed out that the parties were bound by the decision of the Board that the employee was entitled to compensation for "all time lost", whatever that might mean, and that it was a proper function of the District Court, when a suit was filed to enforce an award, to determine what actual dollars and cents the employee was entitled to under such an award by the Board (p. 115).

Similarly, the Court of Appeals in *Hanson* v. *Chesapeake & O. R. Co.* (1969, CA 4 W. Va.), 412 F. 2d 631, held that it was not beyond the jurisdiction or competence of the District Court to enforce the award by ascertaining the names of the employees in the affected class and translating the Board's measure of damages into dollars and cents, but that if the District Judge decided the award was too indefinite to be enforced the Court could remand the proceedings to the Board (p. 634).

In the Court of Appeals, below, the respondent argued, in the alternative, that the Summary Judgment

> "ought to be reversed and the case remanded with directions that the lower court remand the matter to Public Law Board No. 128 for its interpretation of Award No. 1".

The Court of Appeals noted this in its opinion (Appendix B, *infra*, p. A. 11). But the Court, without specifying why the award would not be enforced or reviewed as sought in the petitioner's amended complaint (Addendum to Pet.'s Br. in Ct. of Appeals, p. 1a) directed the District Court to enter judgment for the respondent (Appendix B, *infra*, p. A. 13). This action of the Court of Appeals, below, places it in conflict with the principles followed in other courts of appeal on the same subject matter.

4. Although the parties in the Court of Appeals, below, raised the question of the nature of the injunction issued by the District Court and the extent of the review, the opinion of the Court of Appeals made no reference to this. The petitioner believes that a determination of this issue should have been the first action taken by the Court of Appeals, and that the injunctive relief granted by the District Court had a reasonable basis and did not constitute an abuse of discretion.

## CONCLUSION.

The petitioner urges that the role of the courts in the enforcement and review of awards under the 1966 amendments to the Railway Labor Act should be clarified by this Court. For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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JACK A. WILLIAMSON,
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August 16, 1972.

## APPENDIX A.

Railway Labor Act, Section 3, First (p) and (q) and Section 3. Second (45 U. S. C. § 153 First (p) and (q) and § 153. Second) in pertinent part, as follows:

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be conclusive on the parties. . . . The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board: *Provided, however,* That such order may not be set aside except for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.

(q) If any employee or group or employees, or any carrier, is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award or by the failure of the division to include certain terms in such award, then such employee or group of employees or carrier may file in any United

States district court in which a petition under paragraph (p) could be filed, a petition for review of the division's order. . . . The court shall have jurisdiction to affirm the order of the division, or to set it aside, in whole or in part, or it may remand the proceeding to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order. The judgment of the court shall be subject to review as provided in sections 1291 and 1254 of Title 28.

§ 153, Second, in pertinent part, provides:

Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this chapter, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

If written request is made upon any individual carrier by the representative of any craft or class of employees of such carrier for the establishment of a special board of adjustment to resolve disputes otherwise referable to the Adjustment Board, or any dispute which has been pending before the Adjustment Board for twelve months from the date the dispute (claim) is received by the Board, or if any carrier makes such a request upon any such representative,

the carrier or the representative upon whom such request is made shall join in an agreement establishing such a board within thirty days from the date such request is made. The cases which may be considered by such board shall be defined in the agreement establishing it. . . . Such awards shall be final and binding upon both parties to the dispute and if in favor of the petitioner, shall direct the other party to comply therewith on or before the day named. Compliance with such awards shall be enforcible by proceedings in the United States district courts in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with awards of the Adjustment Board.

## APPENDIX B.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

September Term, 1971 — January Session, 1972

No. 18869

BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN (now known as United Transportation Union), *Plaintiff-Appellee,*

v.

INDIANA HARBOR BELT RAILROAD COMPANY, *Defendant-Appellant.*

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 67 C 1120

Hon. WILLIAM J. LYNCH, *Judge.*

April 3, 1972

Before KNOCH, *Senior Circuit Judge,* KERNER and PELL, *Circuit Judges.*[1]

KNOCH, *Senior Circuit Judge.* This matter grew out of a Complaint filed by plaintiff-appellee, Brotherhood of Locomotive Firemen and Enginemen (now known as United Transportation Union), seeking, inter alia, injunction against defendant-appellant, Indiana Harbor Belt Railroad Company, in which the Union asserted that Indiana Harbor violated an "understanding" between the parties, commonly called the "Home Terminal Agreement", by transferring ten firemen from one terminal to another.

The District Judge, being of the opinion that this was not, as the Union contended, a major dispute, but a minor

1. Judge Kerner heard oral argument, but did not participate in the adoption of this opinion.

dispute (properly a subject for a special adjustment board pursuant to the provisions of the Railway Labor Act, Title 45 U. S. C. § 153 second) removed the cause from his calendar with leave to the Union to reinstate it, if appropriate, at a later time.

The Union and Indiana Harbor agreed to submit their dispute to binding arbitration under the Act. Special Board of Arbitration No. 128 was formed and it received written statements from both sides, after which it issued its ruling "Award No. 1."[2] When the Union sought interpretation

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2. Public Law Board No. 128.
Award No. 1.
Parties to Dispute

Brotherhood of Locomotive Firemen and Enginemen
*vs.*
Indiana Harbor Belt Railroad

Statement of Claim:

The employees' protest against the carrier moving, on May 29 and May 30, 1967, ten (10) demoted engineers or qualified firemen, working as firemen, from their designated home terminal at Norpaul Yard to Blue Island Yard.

Findings:

The Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

On May 29 and 30, 1967, the Carrier blanked certain firemen's jobs at Norpaul, one of the Carrier's terminals and notified the ten junior firemen to report at Blue Island, another terminal. All such firemen were protected men under provisions of the Award of Arbitration Board 282. On this Carrier, there is only one seniority district encompassing all terminals. The ten firemen moved from the working list at Norpaul to the working list at Blue Island were not the ten most junior men on the firemen's seniority roster.

The carrier contended that by Article 27 of the Firemen's Agreement it is permitted to send firemen from one terminal to another; and, further, that the terms of the Award of Arbitration Board 282 gave the Carrier the right to determine what jobs for firemen could be blanked and what jobs would be available for protected employees. To this we agree; but, we find nothing in the Award that has the effect of eliminating seniority rules governing protected

of that Award, the Board replied that it was "clear."[3] The award seems clear and unambiguous to this Court. How-

(footnote 2 continued)

employees. Judge Holtzoff, in his decision of September 7, 1966, found the Carrier had the right to abolish positions as they choose and to transfer a protected fireman from one position to another. But in doing so; "The order of seniority must be followed by the Carrier. They may not select a particular fireman at random and transfer him irrespective of his seniority."

The Organization contends that the Home Terminal Agreement, effective August 1, 1965, established home terminals for firemen and when a terminal has been selected by a fireman it could not be changed except as provided in that Agreement. The August 1, 1965 Agreement permits the fireman qualified as an engineer to select a terminal where he would work as an engineer when his seniority permits, and to work as a fireman so long as his seniority as a fireman permits. We find, however, that when the Carrier, without negotiation and agreement, unilaterally assigned firemen from Norpaul to Blue Island without reference to their standing on the firemen's seniority roster it was in violation of Article 26 of the current Agreement.

Award: Protest sustained.

/s/ ROBERT O. BOYD
Robert O. Boyd, *Chairman*

/s/ ROBERT BROWN
*Carrier Member*
(Per attached Opinion)

/s/ M. A. Ross
*Employee Member*
(Per attached Opinion)

Public Law Board No. 128
Chicago, Illinois
April 2, 1968

3. Public Law Board No. 128.

Interpretation Award No. 1.

Parties to Dispute:

Brotherhood of Locomotive Firemen and Enginemen,

*vs.*

Indiana Harbor Belt Railroad.

On April 29, 1968, the Organization made a request pursuant to Paragraph "i" of the Agreement establishing Public Law Board No. 128. Subsequently, on June 13, 1968, the Board was

ever, the Union moved to reinstate and to amend its Complaint to include a petition to enforce or review the Award. Other motions and affidavits were filed by both parties, which we need not detail here. The Union ultimately moved for summary judgment to enforce the Award.

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(footnote 3 continued)

reconvened for the purpose of hearing argument in respect to the request.

The sole issue presented to the Board Case No. 1 for decision is set forth in the "Statement of Claim" and reads as follows:

> "The employees' protest against the carrier moving on May 29 and May 30, 1967, ten (10) demoted engineers or qualified firemen, working as firemen, from their designated home terminal at Norpaul Yard to Blue Island Yard."

The award was "Protest sustained" and is premised on the finding which reads:

> "We find, however, that when the carrier, without negotiation and agreement, unilaterally assigned firemen from Norpaul to Blue Island without reference to their standing on the firemen's seniority roster it was in violation of Article 26 of the current agreement."

There is nothing ambiguous or uncertain in this language of the findings. An interpretation of an award may be made where there is patent ambiguity in the "Award." Where there is no ambiguity an interpretation may not properly be made. In my opinion the award is clear, and to expand upon it might be an intrusion into collateral issues which, when raised may be determined by other tribunals.

I have therefore concluded that the request for an interpretation of Award No. 1 of Board 128 must be declined.

/s/ ROBERT O. BOYD,
Robert O. Boyd, *Chairman.*

.....
*Carrier Member*

.....
*Employee Member*

Pubic Law Board No. 128.

The "Home Terminal Agreement" which was embodied in a "Memorandum of Understanding"[4] effective August 1,

4. Memorandum of Understanding between the Indiana Harbor Belt Railroad Company, The New York Central Railroad, and their employees represented by the Brotherhood of Locomotive Engineers and Brotherhood of Locomotive Firemen and Enginemen, with respect to promotion and reduction in force rule

WHEREAS the labor organization parties to this agreement have requested that an understanding be arrived at with respect to the promotion of firemen to engineer and the demotion of engineers to firemen;

IT IS AGREED:

1. Engineers and firemen qualified as engineers will, no later than August 1, 1965, indicate in writing to the designated officer of the Carrier, with a copy to the Local Chairman of their organization, the terminal of their choice as engineers. No engineer or fireman qualified as engineer will be permitted to change terminal after the original designation on August 1, 1965, unless written notice is furnished the designated officer of the Carrier ten days in advance of the date change is to be made.

   For the purposes of this agreement the terminals are:

   Franklin Park (Norpaul and Argo, Illinois)
   Blue Island, Illinois
   Gibson, Indiana
   Lyons Yard (Danville, Illinois)

2. If an employee fails to submit an original bid as specified in the above Item 1, Carrier and the organization will designate such terminal and employee will remain at that terminal until he makes election in accordance with the provisions of said Item 1.

3. In the event there are not sufficient engineers or firemen qualified as engineers to fill vacancies at a terminal or terminals, sufficient engineers and/or firemen qualified as engineers will be added to the engineers' extra board at that terminal or terminals by promoting or setting up the senior demoted engineer and/or firemen qualified as engineer at the terminal where such vacancies arise.

4. In the event there is no available demoted engineer or fireman qualified as an engineer at a terminal, the junior available demoted engineer or fireman qualified as an engineer at any other terminal(s) except Lyons Yard will be promoted (set up) and required to work at such terminal, when and where needed.

1965, which was a supplement to the collective bargaining agreement in force between the Union and Indiana Harbor,

5. It is understood that no senior demoted engineer will be in active service as a fireman at any terminal when there is a man his junior in active service as an engineer at the specific terminal unless it is agreed upon by the Carrier and one of the organizations party hereto.
6. A demoted engineer may exercise seniority as an engineer at any terminal where a junior engineer is in engineer service only as provided in Item 1.
7. In the application of this agreement, it is understood that the engineers' extra board at each of the terminals listed in Item 1 will be adjusted independently commensurate with the requirements of the service at each such terminal.
8. Each tour in engineer service will be utilized as one of the starts in computing the twenty-two starts for monthly work period referred to in agreement between the BLF&E and the Indiana Harbor Belt Railroad dated January 31, 1958, providing for a monthly work period of twenty-two starts for firemen. This Item 8 is applicable on the IHB only.

IT IS FURTHER AGREED that in the application of this understanding, it will not result in any additional expense to the Carrier or Carriers, and it is not the purpose or intent of this understanding that there be a combination of the schedule or rules or working agreements of the two organizations and this understanding is solely and only for the purpose as agreed to above, and it is not otherwise implied or intended that this Memorandum of Understanding is in any way to change the rules or regulations of the general agreements of either organization with the Carrier(s), or change, alter, or cancel any regulations with respect to the operation and regulation of the crew boards of either the engineers or firemen.

This Memorandum of Understanding will be effective August 1st, 1965, and will be for a trial period of ninety days and should it prove satisfactory, to all parties, it will be made permanent after the ninety day trial period and thereafter subject to revision or cancellation as provided for in the Railway Labor Act as amended.

Signed at Hammond, Indiana, this 12th day of July 1965:

FOR THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS:

/s/ C. J. Shear
General Chairman

FOR THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN:

/s/ R. L. Lewman
General Chairman

FOR THE INDIANA HARBOR BELT RAILROAD COMPANY:

/s/ C. B. Fleming
General Manager

FOR THE DANVILLE SUBDIVISION, SOUTHERN DISTRICT, NEW YORK CENTRAL RAILROAD:

/s/ R. B. Hasselman
General Manager

allowed each engineer and firemen qualified to work as an engineer to designate one of the Indiana Harbor terminals as a "home" terminal to which he would report to begin and end his tour of duty. This understanding provided that where there were insufficient engineers or firemen qualified as engineers to fill vacancies at a particular terminal, others so qualified would be added by promotions at the terminal where the vacancies arose, and if there were no such qualified personnel at that terminal, then the junior available qualified personnel at another terminal would be required to work when and where needed.

It was further specifically provided that operation of this understanding was not to result in additional expense to Indiana Harbor. Yet in May, 1967, according to the affidavit of Indiana Harbor's Assistant General Manager, there were about three 8-hour switching assignments at the Norpaul terminal where a majority of the firemen assignments averaged 12 hours per day, while the Blue Island terminal had about twenty-five 8-hour assignments, many of which were not filled. Because of over-time payments to firemen at Norpaul, Indiana Harbor incurred substantial additional operating expense.

Accordingly, on May 29, and May 30, 1967, Indiana Harbor transferred the ten firemen here involved, from Norpaul to Blue Island by abolishing ten firemen assignments at Norpaul and ordering the ten men to Blue Island. Shortly afterward, the Union filed this action.

The dispute presented to the Special Adjustment Board (as quoted in the Interpretation Award No. 1, paragraph 2[3]) makes no reference to damages, although the Union's written statement to the Board included affidavits respecting money damages, consisting principally of increased cost of travel to Blue Island as compared to Norpaul and decreased total earnings there. Some claims for additional

amounts were presented administratively to Indiana Harbor, on an allegation that the Home Terminal Agreement had been violated, but these were not carried further, and, under the provisions of the time limit in the Claims Agreement between the parties, it was Indiana Harbor's position that these claims were not before the Board for adjudication. The Award does not refer to them.

After issuance of Award No. 1 and Interpretation Award No. 1, Indiana Harbor abolished six firemen jobs at Norpaul and allowed the six firemen affected to exercise their seniority at the other terminals, subsequently abolishing another six such jobs and allowing those firemen affected to do the same.

The District Court granted that part of the Union's motion for summary judgment relating to Indiana Harbor's right to transfer firemen from one terminal to another and ordered the affected employees restored. The District Judge denied that motion insofar as it sought damages, on the theory that these should be determined in an adversary proceeding.

The District Judge agreed with the Union that the Award directed Indiana Harbor to adhere to the Home Terminal Agreement in its assignment of engineers and firemen qualified to work as engineers. He also interpreted the Award to hold that Indiana Harbor could not abolish the jobs of those men and thus do by indirection what the Court saw as not permitted to be done directly. We do not so read the Award.

Indiana Harbor urges us to review not only the injunctive portion of the District Court's Order, on the ground that compliance therewith will result in irreparable damage to Indiana Harbor, but also the prior interlocutory orders denying Indiana Harbor's motion to remand to the Board and to strike the Union's affidavit filed in support

of its motion for summary judgment, and further asks us to consider the issue of the propriety of the District Court's jurisdiction to determine damages. With the exception of the injunctive question, we reach none of these issues.

As we read it, Award No. 1 after setting out the statement of claim presented to it, holds (1) that the firemen at Norpaul were subject to the provisions of the earlier Award of Arbitration Board 282, (2) that there is only one seniority district including all the terminals here involved, and (3) that the ten men affected were not the most junior men on that single seniority roster.

The Award goes on specifically to approve and agree with Indiana Harbor's position on its right to determine which jobs to abolish, but adds that Indiana Harbor may not disregard the seniority rules by selecting a particular man at random and transferring him without regard to his seniority.

Then, the Award sets out the Union's position, but says nothing about agreeing with it. On the contrary the Board sustains the protest on a different ground: that Indiana Harbor, without negotiation and agreement, unilaterally assigned firemen from one terminal to another without reference to their standing on the seniority roster.

Accordingly, it is the conclusion of this Court that the Summary Judgment entered in favor of the Union must be reversed and this cause remanded to the District Court to enter judgment for Indiana Harbor.

REVERSED AND REMANDED
WITH DIRECTIONS.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

April 3, 1972

Before

HON. WIN G. KNOCH, *Senior Circuit Judge*
HON. OTTO KERNER, *Circuit Judge*
HON. WILBUR F. PELL, JR., *Circuit Judge*

BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN (now known as United Transportation Union), *Plaintiff-Appellee*,

No. 18869 *vs.*

INDIANA HARBOR BELT RAILROAD COMPANY, *Defendant-Appellant.*

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, REVERSED, with costs, and this cause be and the same is hereby REMANDED to the said District Court, with directions to enter judgment for Indiana Harbor, in accordance with the opinion of this Court filed this day.

## APPENDIX C.

IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois

Eastern Division

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN (now known as United Transportation Union), *Plaintiff*,

*vs.*

INDIANA HARBOR BELT RAILROAD COMPANY, *Defendant*.

No. 67 C 1120

### MEMORANDUM OF DECISION MOTION FOR SUMMARY JUDGMENT

This action is brought by the Brotherhood of Locomotive Firemen and Enginemen, now the United Transportation Union (hereinafter Union). The Union alleges that certain action taken by the Indiana Harbor Belt Railroad Company (hereinafter Railroad) constitutes a violation of the collective bargaining agreement between the Railroad and the Union. The aforementioned collective bargaining agreement provided for a seniority system for all of the Railroad's employees designated Firemen pursuant to which the employees were to be ranked in seniority with all of the other employees in their class over the entire rail system. This system wide seniority required the Railroad to recall the senior demoted engineer or the senior fireman qualified as an engineer to the position of locomotive engineer whenever a locomotive engineer was needed at any

of the Railroad's four terminals. Apparently due to the obvious impracticality of this arrangement the Railroad and the Union entered into a supplemental agreement effective August 1, 1965, and designated the Home Terminal Agreement. Under this agreement all engineers and firemen qualified to work as engineers were permitted to designate one of the Railroad's terminals as a home terminal Upon such a designation the employee would report to that terminal to begin and end his tour of duty. The Railroad retained the right to call an employee to another terminal when all engineers and firemen qualified to work as engineers were employed as engineers and that terminal still required additional locomotive engineers.

The Railroad followed the Home Terminal agreement until May of 1967 when certain engineers and firemen qualified to work as engineers were transferred to other terminals without there being a need for additional engineers at those other terminals. The Railroad persisted in this transfer of men over the protests of the Union and subsequently this suit was filed.

This Court determined that the dispute herein was the proper subject for a Special Adjustment Board under the provisions of the Railway Labor Act, 45 U. S. C. § 153 (second) and accordingly struck the matter from its calendar. Such a Board was created and was designated as Public Law Board No. 128. Public Law Board No. 128 had only one responsibility and that was a determination of the validity of the Railroad's transfer of certain employees without consideration of the aforementioned Home Terminal Agreement. The Board was asked to answer a specific question.

> Did the Indiana Harbor Belt Railroad Company violate the existing contract with its firemen employees when on May 29 and May 30, 1967, the carrier transferred, against their wishes, ten demoted engineers, or

firemen, who had established a qualification to work as engineers from their designate home terminal at Norpaul Yard to Blue Island Yard to work as firemen?

The Board considered this question and issued an award on April 2, 1968 which concluded, "[W]e find, however, that when the Carrier, without negotiation and agreement, unilaterally assigned firemen from Norpaul to Blue Island without reference to their standing of the fireman's seniority roster it was in violation of Article 26 (seniority) of the current Agreement. Award: Protest sustained."

The Railroad returned the subject employees to the Norpaul Yard but subsequently took the position that it could abolish the jobs at Norpaul without violating the decision reached by the Public Law Board. The Union protested this course of action and requested that the Board render an interpretative finding amplifying the meaning of its determination. The Board determined on May 1, 1969, that its finding and award required no further interpretation in that there was nothing patently ambiguous about the Award.

As the matter currently stands the Railroad, on June 27, 1969, ordered six of its employees who had designated Norpaul as their home terminal to exercise their seniority at other terminals. On December 24, 1969, and on February 3, 1970, similar orders were issued to six additional employees. The Union has moved for Summary Judgment predicating its motion on the findings and the award of the Public Law Board. In short the Union's position is that the award in and of itself directs the Railroad to adhere to the Home Terminal Agreement in the assignment of demoted engineers and firemen qualified to work as engineers. The Court agrees. The findings of the Board when read in their entirety clearly indicate that the Railroad cannot transfer demoted engineers and firemen qualified

to work as engineers in violation of the Home Terminal Agreement. Additionally the Board has held that the Railroad cannot abolish the jobs of these men and do by indirection what it is not permitted to do directly. Accordingly, this Court grants that part of the Union's motion for Summary Judgment that goes to the issue of the Railroad's right to transfer or abolish jobs in violation of the Home Terminal Agreement and the Railroad is directed forthwith to restore the affected employees to their proper position consistent with the Collective Bargaining Agreement and the Home Terminal Agreement.

The Union has also moved for the award of damages incurred by the various employees and occasioned by the transfers heretofore found to be in violation of the Home Terminal Agreement. Clearly the award of such damages is within the competence of this Court pursuant to 45 U. S. C. § 153 First.

The Railroad's contention that the damage claims were not timely filed or were not before the Board is not well taken. However, the actual amount of the damages cannot be determined without the benefit of an adversary proceeding. Clearly the actual amount of damages sustained by an injured employee is a question of fact that makes Summary Judgment inappropriate on this issue. Accordingly the Union's motion for Summary Judgment on the issue of damages is denied.

Lastly, the Court denies the Railroad's motion for Summary Judgment and its motion to strike certain affidavits filed in support of the Union's motion for Summary Judgment.

WILLIAM J. LYNCH,
*Judge, United States District Court.*

Dated: Sept. 24, 1970.

## ORDER OF DISTRICT COURT

(September 24, 1970)

Order that part of the Unions motion for summary judgment that goes to the issue of the Railroads right to transfer or abolish jobs in violation of the Home Terminal Agreement is granted and the Railroad is directed forthwith to restore the affected employees to their proper position consistent with the Collective Bargaining Agreement and the Home Terminal Agreement. Unions motion for summary judgment on the issues of damages is denied. The Railroads motion for summary judgment and its motion to strike certain affidavits filed in support of the unions motion for summary judgment is denied—Lynch, *J.*